

EXHIBIT H

S148483

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re LAMERLE JOHNSON on Habeas Corpus

The petition for writ of habeas corpus is denied.

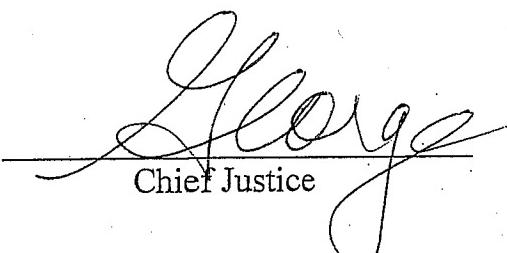
Corrigan, J., was recused and did not participate.

SUPREME COURT
FILED

MAY 23 2007

Frederick K. Ohlrich Cler

DBF/CY


Chief Justice

MC-275

Name La Merle R. Johnson
 Address P.O. 409060 (C15-208L)
Ione, CA 95640-9060

CDC or ID Number J-92682

Frederick K. Ohlrich Clerk

DEPUTY

IN THE STATE OF CALIFORNIA

SUPREME COURT

(Court)

LA MERLE RONNIE JOHNSON

Petitioner

vs.

ROSANNE CAMPBELL, Warden (A)

Respondent

PETITION FOR WRIT OF HABEAS CORPUS

S 148483

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form before answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

NOV 5 2006

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- | | |
|--|--|
| <input type="checkbox"/> A conviction | <input checked="" type="checkbox"/> Parole |
| <input type="checkbox"/> A sentence | <input type="checkbox"/> Credits |
| <input type="checkbox"/> Jail or prison conditions | <input type="checkbox"/> Prison discipline |
| <input type="checkbox"/> Other (specify): _____ | |

1. Your name: La Merle R. Johnson2. Where are you incarcerated? Mule Creek State Prison3. Why are you in custody? Criminal Conviction Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

kidnap/ransom

- b. Penal or other code sections: 209(a)

- c. Name and location of sentencing or committing court: San Mateo County Superior Court

- d. Case number: SC 31800

- e. Date convicted or committed: January 2006

- f. Date sentenced: _____

- g. Length of sentence: Life+11 years

- h. When do you expect to be released? When the Court releases me

- i. Were you represented by counsel in the trial court? Yes. No. If yes, state the attorney's name and address:

Edward Pomeroy

4. What was the LAST plea you entered? (check one)

- Not guilty Guilty Nolo Contendere Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

- Jury Judge without a jury Submitted on transcript Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (if you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

'See Attached'

- a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly *what* to violate your rights at what time (*when*) or place (*where*). *(If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

'See Attached'

- b. Supporting cases; rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

8. Did you appeal from the conviction, sentence, or commitment? Yes. No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

n/a

b. Result

c. Date of decision:

d. Case number or citation of opinion, if known:

e. Issues raised: (1)

(2)

(3)

f. Were you represented by counsel on appeal? Yes. No. If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? Yes No. If yes, give the following information:

a. Result n/a

b. Date of decision:

c. Case number or citation of opinion, if known:

d. Issues raised: (1)

(2)

(3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

n/a

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

n/a

b. Did you seek the highest level of administrative review available? Yes. No.
Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? Yes. If yes, continue with number 13. No. If no, skip to number 15.

13. a. (1) Name of court: San Mateo County Sup. Court

(2) Nature of proceeding (for example, "habeas corpus petition"): writ of habeas

(3) Issues raised: (a) Statute governing Parole-Eligibility Unconstitutional

(b) San Mateo County Prosecutor conflicted, etc.

(4) Result (Attach order or explain why unavailable): Denied/Attached

(5) Date of decision: 10/18/06

b. (1) Name of court: First District Appellate Court (Div. 3)

(2) Nature of proceeding: writ

(3) Issues raised: (a) Same as in Superior Court, w/ refutation of denial

(b) _____

(4) Result (Attach order or explain why unavailable): Denied/Attached

(5) Date of decision: 11/22/06

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

* 14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:
n/a

* 15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)
n/a

16. Are you presently represented by counsel? Yes. No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? Yes. No. If yes, explain:
Feder District Court, dealing with collateral attack on conviction

HIV-Writ, this Court SI47523

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:
n/a

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: November 28, 2006


 (SIGNATURE OF PETITIONER)

Original Writ Filed In The Superior Court

Follows is Superior Court Denial, Petitioner's Response to that,
Appellate Court's Denial, and Petitioner's Response to that.

1 La Merle R. Johnson, J-92682
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2 Ione, CA 95640-9060
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3

4 IN THE STATE OF CALIFORNIA
5 COUNTY OF SAN MATEO

6 LA MERLE R. JOHNSON,) Case # _____
7 Petitioner,) WRIT OF HABEAS CORPUS DUE TO
8 vs.) DENIAL OF PAROLE ELIGIBILITY
9 ROSANNE CAMPBELL,)
10 Respondent.)

11 FACTS

12 Petitioner is serving a Life+11 year sentence for the
13 kidnap/ransom of Ellis Foots. On March 22, 2006, Petitioner
14 had his initial (first) parole-eligibility hearing, he was
15 denied parole for 2-years. Prior to having the initial
16 hearing, Petitioner was informed by Board Member and other
17 State-Workers, that he would be denied parole, (See Exh. A,
18 # 1); he filed a habeas corpus in San Mateo County Superior
19 Court advising them of such, petition denied. (Exh. B.)

20 After advising Petitioner that parole was denied, the
21 Board told him, "This was the factors that we used, first of
22 all the offense was carried out in a specially cruel and
23 callous manner." (Exh. C., pg. 77, ln. 16-18)

24 Claim I

25 STATUTE ALLOWING BOARD TO DENY PAROLE BASED ON FACTS THAT CAN
26 NEVER BE CHANGED IS UNCONSTITUTIONAL, U.S.C.A § & 14

27 California Penal Code, (henceforth PC) 3041(b), enables
28 the Board to base denials on unalterable facts;

1 "The Panel or board SHALL set a release
2 date unless it determines that the gravity
3 of the current convicted offense or past
4 convicted offenses, is such that consideration
5 of the public safety requires a more lengthy
6 period of incarceration for this individual,
7 and that a parole date therefore, cannot be
8 fixed at this meeting."

9
10 Biggs v. Terhune 2003 DJDAR 7245, stated that a life
11 prisoner does have a liberty-interest in a parole hearing,
12 also stated, "A continued reliance in the future on an
13 unchanging factor, the circumstances of the offense and
14 conduct prior to imprisonment, runs contrary to the
15 rehabilitative goals espoused by the prison system and could
16 result in a due process violation."

17 Petitioner dis-agrees with Biggs (supra) in part, asserting
18 that any reliance on unchangeable factors is a due process
19 violation, which would make the statute (PC 3041. (b))
20 allowing for such unconstitutional.

21 Life with the possibility of parole means just that, life
22 with the possibility of getting out one day. When the person
23 is given the sentence, the sentencing Court is already aware
24 of the persons past, which may play heavily into giving them
25 the sentence. The sentence comes with a statutory timeline
26 regarding how much time the person SHALL serve before parole
27 can be considered.

28 Once the person becomes eligible they are then sent
29 before the parole-board, to consider whether or not the person
30 can safely return to society. Now at this point, it is a
31 fact that the person has done something horrible warrenting
32 their need to see a parole-board, but the Boards job is not

1 to re-sentence the person, (U.S.C.A. 5), for crimes the Court
2 has already sentenced them for, but instead to assess whether
3 or not, today, that day, the person is not a threat to society.

4 With that in mind, the Board's job being to assess whether
5 or not the person is a current danger, the only factors that
6 can illuminate the potential or non-potential threat level is
7 in-prison behavior, facts occurring after the sentencing and
8 which are things the prisoner can actually do.

9 So, the logical question is this, if the only behavior
10 which the Board can use to justify release, is post-crime
11 (in-custody) behavior, how is it constitutional if the statute
12 allows them to deny parole based on things not controllable
13 by anybody, the altering of the past?

14 PC 3041.5, (2) & CCR Title 15, §2268(c)

15 When denying parole, it is statutorily
16 mandated that the Board;

17 'Board **SHALL** advise prisoner of reasoning
18 for denial, and, (Penal Code), "suggest
activities in which he or she might
19 participate that will benefit him or her
while he or she is incarcerated." '

20 It seems the statutes are in conflict, on the one hand
21 PC 3041 (b) allows for the Board to deny parole based on
22 unchangeable facts, but PC 3041. (2), instructs the Board to
23 advise the person on what activities to involve themselves in
24 to be considered for parole, the only logical-reasoning for
25 the purpose to be before the Board. The Board, when denying
26 parole based on crime factors, (PC 3041(b)), could not
27 possibly reasonably fulfill their statutory obligation per
28 PC 3041.5. (2), because no-thing the Board can recommend or

1 suggest will alter the past, therin lies the conflict.

2 When the Board is enabled to deny parole based on facts
3 that can not be changed, they automatically fail to adhere to
4 their statutory obligation of suggesting activities for the
5 prisoner to engage in which could make them paroleable,
6 because nothing can change the past.

7 Also, the Board's own actions further highlight the
8 constitutional-problems beforementioned. Statistically the
9 Board denies parole 99+% of the time at initial hearings, and
10 98+% at subsequent hearings, (See Exh. A., # 2, & Exh. D,
11 Public Information Request). In all of those hearings where
12 parole is denied, the crime is used as a factor. When at some
13 future date in a subsequent hearing, parole is granted, what
14 factors could the Board possibly utilize to justify release
15 after having previously utilized the unchangeable crime
16 factors as reasoning for denial?..... the justification
17 warrenting release can only come through positive in-prison
18 behavior, accomplishments. And that is true in the rare
19 instances where parole is granted at the initial-hearing,
20 in-prison positive behavior is used to justify the granting
21 of parole.

22 Constitutionally (Due Process) speaking, if the only
23 reason the Board can justify lifer-release is positive in-
24 prison behavior, then how can it ever be fair, in respect
25 of the liberty interest that a prisoner has at a parole-
26 hearing, for the Board to be able to utilize factors that
27 can not be changed. Note: (The Board has never rationalized
28 to the general-public and or the reviewing Full-Board and

1 Governor that they are recommending release of a life-prisoner,
2 just-because, and not putting on the record the gains and other
3 reasoning justifying their decision, gains being from in-
4 prison behavior.)

5 As this relates to Petitioner, his Constitutional Rights
6 have been violated when his crime factors were/are utilized
7 to deny him parole; in that he is being re-sentenced by the
8 Board, twice being put in jeopardy for the same offense,
9 U.S.C.A. 5 & 14; his liberty interest of the parole-hearing
10 is violated when unalterable facts are used to deny parole at
11 any stage, U.S.C.A. 14; and the statute itself is made by
12 the writers unconstitutional, because when past crimes are
13 used to deny parole per PC 3041(b), then the Board is unable
14 to fulfill its statutory obligation of PC 3041.⁵ (2) because
15 nothing they can suggest the prisoner to do to make them
16 eligible, can alter/change the past, U.S.C.A. 5 & 14.

17 Claim II

18 Prior to ever going before the Board, Petitioner was told
19 by several reliable sources, (Exh. A., #1), that he would
20 not be receiving a parole date at his initial hearing; not
21 for anything he did or failed to do, but simply because
22 despite the statutory language, "The Panel or board SHALL set
23 a release date...", (PC 3041(b)), the Boards known
24 un-spoken/underground policy was that inmates did not receive
25 parole-grants at their initial hearings.

26 This un-spoken/underground policy which clearly conflicts
27 with the mandatory language of the statute, is clearly in
28 effect when looked at in connection with the statistical

1 data regarding parole-grants at initial board-hearings;
2 99+% of those going to their initial hearings are denied
3 parole. (Exh. A. # 2, & Exh. D.)

4 PC 3041(b) contains mandatory language, "The Panel or
5 board SHALL set a release date...", going on to outline the
6 criteria excusing the ignoring of the mandatory language. As
7 Petitioner pointed out in Claim I, the criteria (crime &
8 other pre-prison acts) giving cause to ignore the mandatory
9 language is in his opinion, unconstitutional.

10 But regardless of whether or not it (PC 3041(b) is
11 unconstitutional as described in Claim I, what is clear is
12 that the Board has en-acted and en-forced an underground
13 policy that conflicts with the Statute.

14 This is easily proven by the consideration of one-
15 question;

16 In light of the fact, that every lifer-case
17 has its own unique factors, how probable,
18 logical, is it, that 99+% of the time, the
19 criteria set out which excuses the Board to
ignore the mandatory language of setting a
date, is warranted?

20 The setting of the date, in fact based on the statutes
21 mandatory language, should be the norm, not the exception,
22 but in the instances of the California Panel/Board practices
23 of its parole procedure, it is the norm not to set the date,
24 to ignore the mandatory language, and it is not even the
25 exception to set the date when minus 1% is found suitable at
26 initial hearings.

27 CCR. Title 15, (Board of Prison Terms), §2250, states
28 that a prisoner is entitled to an Impartial Hearing Panel,

1 a fair and impartial hearing, yet how is that possible when
 2 the panel is en-forcing an illegal-policy?

3 Petitioner's parole-eligibility was pre-determined prior
 4 to him ever entering the Board-Room, this is reasonably
 5 stated when considering that he was told by reliable sources,
 6 (A Board Member, two of his previous Counselors, one of which
 7 wrote his Board-Report, and other's.), prior to the hearing
 8 that he would not be receiving a date. (See Exh. A. #1);
 9 he advised the Superior Court of County of committement of this
 10 months in advance of the hearing through a writ of habeas,
 11 which was denied, (Exh. B.);

12 But most important in the illumination of this issue, is
 13 the undeniable statistical-data that clearly shows that an
 14 underground/unwritten/un-spoken policy is in play which
 15 mandates that a parole date not be set, ignoring the statutory
 16 language which mandates that the date is set; 99+% of
 17 differing case-factors prisoners are denied parole.

18 Petitioner's right to a fair and impartial hearing, his
 19 liberty interest of due process (U.S.C.A. 5 & 14) innate in
 20 a parole-eligibility hearing, can not possibly, reasonably,
 21 be adhered to when years prior to the hearing the outcome is
 22 conveyed to Petitioner; AND, when he's forced to have a
 23 hearing under conditions/policies that he can not defend
 24 against because there blatantly illegal and not written down
 25 for constitutional review by the Courts.

26 Claim III

27 FACTS: While incarcerated in the San Mateo County Jail
 28 awaiting trial on his own case, Petitioner thwarted a murder-

1 plot being hatched by detainees attempting to manipulate the
2 outcome of their individual trial-process. As a result
3 Petitioner eventually became a witness for the San Mateo
4 County District Attorney's Office, against Frank Porterfield
5 and Bernard Knight in exchange for a plea-agreement of 17
6 years, 8 months, with half-time credits, which would have
7 released him from prison in 2001.

8 During the stage of being a witness for the prosecution,
9 the San Mateo County Sheriff's Department purposefully and
10 continuously placed Petitioner's life in danger.

11 While Petitioner slept in his cell, Sheriff Personnel
12 placed Bernard Knight in the cell with him, this after he
13 had testified against Knight in open Court at a preliminary
14 hearing. (See Exh. E., Rt. 1564-65)

15 Eventually a Court-Order was issued, ordering that
16 Petitioner be housed in a different County Jail, though
17 stating in the order that it was due to Petitioner's fears.
18 (See Exh. F.)

19 Bernard Knight and Frank Porterfield's trials were
20 severed, Porterfield going to trial first. Petitioner
21 testified against Porterfield. After the truth-full
22 testimony, Petitioner was beat up and threatened by Sheriff-
23 Personnel of San Mateo County, some of the comments made to
24 him were;

- 25 - You're going to be set up and killed for
26 cooperating with the D.A.'s (San Mateo
County) office. (Exh. E., Rt. 1589, 1618)
27 - Your enemies will be placed with you. Rt. 1588
28

- 1 - You're a snitch, watch out for Pelican
2 Bay. Rt. 1586-87 & Exh. G, pg. 21-22
- 3 - We're going to make sure that your snitch
4 jacket follows (To-Prison) you. Rt. 1589
- 5 - That the D.A. was lying to him (About being
6 able to protect him in prison). Rt. 1645
- 7 - That there is a cop-side and an inmate-
8 side, and that he (Petitioner) had better
choose one. Rt. 1622-23, & 1633
- 9 - Petitioner was hog-tied and naked when most
of the threats were made. Rt. 1586-87

9 Note: All Rt. cites are to documents contained in Exhibit E.

10 After threats were made, Petitioner in reasonable fear
11 of threats being delivered, recanted his testimony. In
12 investigating recantation, it was confirmed by Inspector
13 Bill Cody of the San Mateo Sheriff's Department that the
14 incident and threat(s) did take place. (Exh. G. pg. 16, 21-22)

15 In spite of the threats, and reasonable fear, Petitioner
16 eventually recanted the recantation, citing fear, in an
17 exchange he had with defense counsel of Porterfield after
18 recanting recantation, here is what he said;

19 "I don't know what happens in jails or
20 penitentiary. I know I'm safer in San
Francisco. Yeah. That's true. I'm not
bothered. I'm not harassed.

21 Sergeant Dowdy (One of those delivering
22 threats) told me that they were going to
send a package with me regardless, (Package;
23 documentation telling prison that Petitioner
was a snitch, inference to him that he would
be killed because of it.)

25 The only reason I called Dirickson (Investigator
26 Petitioner had revealed murder-plot too, whom
when recanting out of fear he blamed his
27 testimony on Dirickson, stating Dirickson had
fed him the murder-plot story, and whom he called
28 in this instance to recant recantation and ask
for FBI intervention because he did not know who

1 to trust) was because I don't, when I
2 walked out of here last week, (After
3 testifying truthfully, no recantations),

4 I felt good about myself. I felt that I had
5 done something right. (After testifying
6 about a murderer who had confessed to him,
7 and was plotting more murders to influence
8 his case, which Petitioner tried to sway him
to abandon the plot, and only called
Authorities when it became clear that the
plot was going forward when weapons were
obtained; upon Petitioner's information the
weapons were confiscated and the plot was
foiled.)

9 The only reason I changed it (recanted original
10 testimony) was because I'm scared.

11 And I'm still scared. (Rt. 1649)

12 Petitioner later revealed that detainee Stephon Williams
13 had also threatened him on the night that Sheriff-Personnel
14 beat and threatened him. (Rt. 1663)

15 At the end of Petitioner's testimony, defense counsel
16 motioned to have Petitioner's and another witness' testimony
17 stricken due to perjury, then Deputy District Attorney (DDA)
18 Charles Smith stated;

19 "And, that it should be stricken as being
20 completely unreliable regarding Lamerle
21 Johnson. Your Honor you heard his testimony:
The first version, the second and the third.

22 And what is CLEAR is that the system FAILED
23 him ultimately, because I'm responsible for
any witness' safety ultimately.

24 And, the FAULT is MINE; NOT HIS." Rt. 1676, Ln.
19-25

25 The case went to the jury, with DDA Smith using
26 Petitioner's testimony in his attempt to convict Porterfield.
27 Petitioner was told that if Porterfield trial won, that he
28 would get his plea, but that if it was lost, that Chief

1 Deputy Prosecutor Steve Wagstaff had stated that he was going
2 to fry Petitioner's ass. (Exh. H, #11).

3 Important Note: Steve Wagstaff was the Chief Deputy under
4 District Attorney Jim Fox, both men are still today in those
5 same positions.

6 Porterfield trial lost, San Mateo County District Attorneys
7 Office filed a motion to rescind Petitioner's plea-agreement.

8 Court then appointed Edward Pomeroy to represent Petitioner,
9 who without the record of DDA accepting responsibility for
10 Petitioner's actions, advised Petitioner to not oppose the
11 Prosecutions' motion to rescind. After the motion was granted,
12 Petitioner learned that Pomeroy was the ex-attorney for
13 Bernard Knight, the defendant whom he had testified against
14 and awoke to find being placed in his cell by Sheriff-Personnel.
15 And that if Pomeroy had succeeded in salvaging Petitioner's
16 plea, which would have called for him to still testify against
17 Knight; that Pomeroy would have been testifying on behalf of
18 Knights's defense in the same murder trial Petitioner was
19 scheduled to testify against Knight.

20 Pomeroy avoided the conflict with Knight, by advising
21 Petitioner to not fight for his plea, thus creating a conflict
22 with Petitioner. (Exh. H., #8-10, &12, Court was aware of the
23 conflict, #10, never acted on it.)

24 Despite Pomeroy acting in accordance with the conflict and
25 not in the best interest of his client at the rescission
26 hearing, some interesting exchanges were had in the Court
27 room as it related to Petitioner's safety in the San Mateo
28 County Jail, brought up by the DDA motioning for rescission.

1 Discussion After Rescission-Motion Granted

2 DDA: "There is an order for housing Mr. Johnson in
3 San Francisco and the conditions underlying
4 that order have not changed. We ask he remain--
 however, I will do an order of return, given the
 problems we had in this matter."

5 Court: "Mr. Pomeroy, you are aware of that order?"

6 Pomeroy: "Yes."

7 Court: "In fairness to Mr. Johnson, I think he should
8 be housed in San Francisco, but if that's going
9 to impinge upon your preparation for trial and
 so forth, that issue will have to be addressed at
 some point."

10 Pomeroy: "No, your Honor. It will just give me an
11 opportunity to go to San Francisco and sample
 some better restaurants."

12 DDA: "Just for the record, this was Mr. Pomeroy's
13 request when we discussed it off the record."

14 Court: "I understand the reasons for it. In fairness to
15 Mr. Johnson, I think it's CRITICAL to order that
 he be housed in San Francisco." (Exh. I, pg. 7)

16 In an earlier exchange between the Porterfield Court
17 prior to Petitioner's recantation on the record, the same
18 Court who issued the protective-housing order citing that
19 Petitioner believed his life was in danger if he stayed in
20 the San Mateo County Jail;

21 Counsel: "He (Petitioner) also requested me to ask the
22 Court that he be immediately transferred back
 to San Francisco after his testimony.

23 Based on police problems he had in the jail
24 when he was here testifying last week. And, again,
25 part of the errors that occurred this afternoon,
 in having him placed (By San Mateo County Sheriff-
 Personnel) in the same cell with the defendant
 (Frank Porterfield) just a few moments ago.

26 Court: I'm not going to make any specific orders to the
27 Sheriff's Office regarding transportation. I don't
 know if we will even be through with his testimony
28 this afternoon.

1 But, I certainly will express the HOPE, and
2 will ask the bailiff in this department to
3 convey to the transportation officials that,
4 obviously, Mr. Johnson is an in custody witness
5 in a criminal case.

6 And that he ought to be both housed and
7 transported accordingly. (Rt. 1505)
8

9 Petitioner's case was taken to trial, prosecuted by then
10 DDA Stephen Hall, he predictably lost and was sentenced to
11 Life+11 years in prison. After the conviction, per the Penal
12 Code 1203.01, 'Statement of Views', Stephen Hall in
13 representation of the San Mateo County District Attorney's
14 Office, recommended that I never be released from prison,
15 and in that statement failed to advise the prison of any
16 danger to Petitioner's life.

17 Important NOTE: Stephen Hall is now the Presiding Judge
18 of San Mateo County.

19 Upon arriving in prison, every threat made to Petitioner
20 by San mateo County Sheriff Personnel came true, he was
21 placed with his enemies and eventually slashed/stabbed by
22 Stephon Williams, the same Williams who threatened Petitioner
23 on the night that Sheriff Personnel did, (Rt. 1663), and the
24 same Williams who was known by Prison-Personnel as being
25 Petitioner's enemy. (Exh. H., #13)

26 No charges were ever brought against any Sheriff-Personnel
27 or inmates in regards to the threats and assaults Petitioner
28 suffered. State Attorney General's Office was made aware of
 all of the above-mentioned, and provided with the documentation
 (And more) accompanying this writ as exhibits, as of today,
 no action was taken by the Chief Law Officer of the State.

1 On March 22, 2006, at Petitioner's Board Hearing, San
2 Mateo County, through Deputy District Attorney Sean Gallagher,
3 opposed Petitioner's request for parole.

4 Argument,

5 CCR Title 15, (supra), §2030, 'Prosecutor Participation',
6 §2030(3), "...if the district attorney cannot appear because
7 of a conflict."

8 It should go without saying that to have a fair and
9 impartial parole hearing, the prosecutions' office opposing
10 or requesting parole should be unbiased.

11 In this instance, an instance where San Mateo County
12 Sheriff Personnel continuously set Petitioner up to be
13 killed in relation to him cooperating with the District
14 Attorney's Office, DDA admitted the system (San Mateo
15 County) had failed Petitionenr, (Rt. 1676), and the Chief
16 Deputy Prosecutor threatened to fry Petitioner's ass if he
17 lost a case, (Exh. G., #11), that just maybe San Mateo
18 County should not be allowed to make a recommendation
19 regarding Petioner's Parole-Eligibility.

20 Not to mention the fact that the key-players mentioned
21 throughout the before facts, Steve Wagstaff, James/Jim Fox,
22 and Stephen Hall, (San Mateo Counties, Chief Deputy
23 Prosecutor, Elected District Attorney, and Presiding Judge,
24 top three law-officers of County), are still in place
25 today.

26 Petitioner can not possibly receive a fair or impartial
27 parole-hearing with San Mateo County being allowed to make
28 a recommendation, U.S.C.A. 5 & 14; Petitioner and his

1 counsel at the Board hearing made this objection. (Exh. C.,
2 pg. 11-12)

3 The County of San Mateo, Judges, D.A.'s, and Defnese
4 Counselors, knew that Petitioner's life was in danger by
5 San Mateo County Sheriff Personnel, that danger followed him
6 to prison as the threat stated it would, yet not one sworn
7 Fiduciary Officer of the Court advised Prison-Personnel of
8 the reasonably-predictable danger to Petitione's life;
9 no one stood up to protect Petitioner's plea, despite the
10 fact that everyone knew police-duress had caused it to be
11 in jeopardy, and despite the fact that the San Mateo County
12 District Attorney's Office was okay while knowing the same
13 facts it knows now, with Petitioner going home in 2001 if
14 they won the Porterfield/Knight case, that same office now
15 recommends that Petitioner in essence never be released
16 from prison, die in prison, because as their DDA Smith put
17 it;

18 "...What is clear is that the system failed
19 him ultimately.

20 And, the fault is mine (San Mateo County);
not his."

21 Constitutionally, it would be a slap in the face of
22 justice, to not order that San Mateo County never again take
23 any role in the current instance surrounding Petitioner's
24 incarceration.

25 Another un-known factor of how this effected Petitioner's
26 parole hearing is this; off the record, the Presiding
27 Commissioner Archie "Joe" Biggers, asked San Mateo County
28 Deputy District Attorney Sean Gallagher about the plea-

1 agreement. (See Exh. A., # 3) Defense counsel conveyed this
2 to Petitioner during the intermission/deliberation, stating
3 that Commissioner Biggers asked DDA Gallagher this after he
4 left the room and before deliberations began; counsel did not
5 hear exactly how DDA Gallagher responded.

6 Petitioner can not state with any degree of certainty how
7 DDA Gallagher responded to the Commissioner's question, but
8 he can reasonably state that he did not go into the detail
9 outlined in the facts of this writ.

10 And whatever DDA Gallagher said in response, it did not
11 stop the Commissioner from stating;

12 "We also noted that the District Attorney
13 from San Mateo County in accordance with 3042
14 notices communicated opposition to a finding
15 of parole suitability." (Exh. C., pg. 81, Ln. 13-17)

16 So, in this instance, a District Attorney's Office
17 with a clear conflict of interest recommendation to oppose
18 parole-suitability was cited in the reasoning justifying
19 denial. An office, which for arbitrary and capricious reasons
20 are requesting denial of parole; (Wagstaffe sought maximum
21 sentence for revenge purposes, not out of justice, Exh. H.,
22 # 11). In speaking on what a miscarriage of justice can
23 entail in, Sawyer v. Whitley 505 U.S. 333, 112 S.Ct 2514,
24 stated;

25 "The accusatorial system of justice adopted
26 by the Founders affords a defendant certain
27 process-based protections that do not have
28 accuracy of truth finding as their primary
goal. These protections--including,...the
Eighth Amendment right against the imposition
of an arbitrary and capricious sentence."
at 2528

1 Now, parole-board case-precedent has given the Board wide-
2 discretion, yet that does not trump the fundamental-rights
3 protecting prisoner's at the hearings.

4 In this matter the District Attorney had a clear conflict
5 which the Board ignored, and an opinion/request for parole-
6 denial which the Board utilized in its explanation of denial.

7 When opposing parole, the San Mateo County District
8 Attorney's Office continued to perpetrate the system's
9 failing Petitioner, (Rt. 1676), it continued to impose a
10 cruel and unusual punishment-sentence, which was sought out of
11 revenge (arbitrary and capricious reasoning) and is now
12 utilizing the Board of Parole Hearings to seek a slow-death
13 sentence where the actual death-threats-attempts on Petitioner's
14 life actually failed. (Exh. H., #13, Exh. G., pg. 16, 21-22,
15 and all threats outlined in Rt's.)

16 Constitutional Violations, U.S.C.A. 5, 8, & 14; prosecution
17 presence and recommendation made hearing unfair and partial.

18 Claim IV

19 Board of Parole Hearings, denied parole, for as they
20 stated per PC 3041(b);

21 "This was the factors that we used, first of
22 all the offense was carried out in a
23 specially cruel and callous manner."
(Exh. C., pg. 77, Ln. 16-18)

24 Maximum 2-year denial given, reasoning;

25 "In a separate decision the panel finds that
26 it's not reasonable to expect that parole be
granted at a hearing during the following
two years.

27 And that was done primarily because again the
offense was committed in an especially cruel
manner..." (Exh. C., pg. 82, Ln. 8-13)

1 Per PC 3041.~~S~~ (2), the Board following the denial then
2 outlined its recommendations; stay disciplinary free, get more
3 self-help, and get another trade. (Exh. C. pg. 83-84, and Exh.
4 J.)

5 In Claims I & II Petitioner pointed out his disagreements
6 with the Statute(s), so he will re-assert them here without
7 rehashing them in full.

8 Regarding the Boards recommendations Petitioner has a few
9 things he would like to point out. The Board stated;

10 "We feel you should get some self help to
11 furthur assist you in understanding what
12 your commitment offense is or was."
(Exh. C., pg. 83, Ln. 19-21)

13 Earlier having stated;

14 "We also want to commend you for your work
15 while you have been here in prison."
Exh. C., pg. 82, Ln. 1-3

16 What work? Answer, starting self-help Groups, etc.

17 "You have several chronos. You just completed,
18 there is a chrono 1/31/06 that you completed
19 the Victim Awareness Offender Program and you
were instrumental in requesting the program for
Mule Creek." (Exh. C., pg. 39-40, Ln. 26-4)
www.realisticreform.com (Exh. Q.)

20 In recommending get some self help, Petitioner's logical
21 question would be, what self help? The Board did not state
22 what kind to get, just to get some. After the denial was
23 read, explaining the why's of denial and what he should do,
24 he said, "Can I respond to any of that?", his lawyer told
25 him no. (Exh. C. pg. 84, Ln. 19-21)

26 Society is being scammed, yes, scammed, and this Petitioner
27 and other prisoner's Due Process Rights are being trampled
28 over when told to participate in Self Help groups offered in

1 California and this reasoning being used to justify parole-
2 denials.

3 Scammed, strong language, what justifies its use? Inmate
4 Richard Mejico, the founder of Criminal Gangs Anonymous (CGA),
5 the same CGA cited in Petitioner's Board Hearing, (Exh. C.
6 pg. 38), the same CGA currently functioning in several
7 prisons and allowed inter-national news coverage by California
8 Prison-Personnel as a unique self help group;

9 Yet Richard Mejico, was told by a Board/Panel, that
10 he needed, more self help; went to Board, August 26, 2005.
11 (See Exh. A., # 4, & Exh. D.), that proves the scam.

12 Richard Mejico was allowed to start the re-entry program
13 at Mule Creek State Prison, the prison Petitioner is in. The
14 re-entry programs mission is to prepare paroling inmates to
15 reintegrate safely back into society. If Sacramento, Mule
16 Creek State Prison, can en-trust a prisoner with initiating
17 the re-entry program to protect society, then how can Richard
18 Mejico be in need of self help?

19 Richard Mejico's CGA program was embraced because nothing
20 else offered by the prisons seem to be working; 70+%
21 recidivism rate in spite of self-help offered by prisons.

22 This Petitioner since 2005 has been trying to get the
23 prisons to re-habilitate sex-offenders, a true danger to
24 society. Submitting-proposals, (Exh. K), which were ignored,
25 filing prison-appeals to protect children from child-
26 predators in visiting-rooms, appeal denied, writ currently
27 pending in California Supreme Court, #S142658, (Exh. L);
28 another pending writ which was filed after prison-appeal was

1 denied is one seeking that all persons convicted of sex-crimes
 2 be re-habilitated prior to release. (Exh. M.)

3 Through legal-filings, prison appeals and proposals, and
 4 through a web-site, www.realisticreform.com, Petitioner is
 5 seeking reform of the prison system and implementation of
 6 realistic rehabilitative measures. (See Exh. Q.)

7 Even the current acting Secretary of Corrections, concedes
 8 that re-habilitation (self-help) is not possible under current
 9 prison-conditions. (Exh. N.) He blames it on overcrowding,
 10 but even before it became "overcrowded", California still had
 11 the highest recedivism rate (70+%) in the nation, despite the
 12 fact it spends the most money on prisons.

13 Get Another Trade

14 Petitioner has gotten two-trades while incarcerated, one
 15 his family paid for, Paralegal Certification, and the computer
 16 Vocations course he completed in prison. (Exh. C. pg. 82,
 17 Ln. 3-8).

18 Petitioner was told to get a trade that does not involve
 19 and or surround his current training, administrative
 20 management, just in case his career choice does not pan out.
 21 (Exh. C. pg. 83, Ln. 12-19)

22 Again, the public is getting scammed and Life-Prisoner's
 23 going before the Board & having their Due-Process rights
 24 ignored/trampled.

25 Why? California is spending 100's of millions in offering
 26 Prisoner's educational/vocational opportunities, but what
 27 overall effect is it having on improving public-safety? This
 28 Petitioner in an information request posed that and other

1 questions, (Exh. D.); requesting specific information, data-
2 analysis, as to how much money prisons spend on offering
3 Vocations, how many prisoner's get out and secure employment
4 in the trained fields, what type of tax-revenue was being
5 realized from inmates released and securing employment in the
6 trained field, and did the numbers (money-spent) prove that
7 the expended revenues (tax-dollars) were cost-effective.

8 Public Information request was filed in January of 2006,
9 2-months prior to Petitioner's parole hearing. In early
10 March, Sacramento sent the request to MCSP Facility 'C'
11 Captain Robinson, and told him to respond to Petitioner.
12 Robinson stated clearly to Petitioner that he could not
13 respond to the request, and doubted if the California
14 Department of Corrections and Rehabilitation was even in
15 possession of such data. (Exh. A., # 5) The information
16 request has still not been responded to, 8-months later.

17 Petitioner even filed a prison-appeal on this issue,
18 (Exh. O.), the prison told him he had no standing to file
19 such an appeal; so Petitioner listed that and other ignored
20 appeals on his website, www.realisticreform.com, requesting
21 the public to demand action on such, in his opinion, common-
22 sense issues.

23 Petitioner's constitutional point is this, he's doing
24 more to re-habilitate himself in Vocational training and in
25 other areas then the prisons are, and even their head-person
26 states he can't do it, (Exh. N.), the recidivism rate
27 reflects that the prison can not do it and this was before the
28 "overcrowding", so it seems the only solution is for the

1 Courts (State/Federal) to step in and assess parole-eligibility
 2 and in Petitioner's opinion, to re-structure the prisons to
 3 trully bring about public-safety.

4 Know More About Job

5 Petitioner was criticized in the denial for his parole-
 6 plans, Board stating;

7 "Your parole plans was not a total package as
 8 well. You sat here and you could stay with your
 9 sister or you could stay with your brother and
 10 when the Deputy Commissioner asked you about
 11 your employment plans well you said that you
 12 were going to work with your brother in a
 13 restaurant and you didn't know what type of
 14 restaurant it was. You said you thought it was
 15 something like a Denny's okay. If your going to
 16 be employed, then we go furthur into the finding
 17 out about the réstaurant,

18 what you would do there, well he initially
 19 wanted me to be the Human Resources person
 20 but I need furthur training, then you said
 21 that I'll do dishwashing, I'll do anything
 22 but then you need to find out what type and
 23 pin down as to what job you are going to have."
 (Exh. C., pg. 80-81, Ln. 24-13)

24 This Petitioner took the Board three parole-plans, one
 25 with his brother Du Shawn Johnson who is a Detective for the
 26 Visalia Police Department and owns several business';
 27 when offered the job, Petitioner reasonably did not request
 28 every business-detail of his brother's business, conveyed to
 the Board;

29 "He owns kind of like a Denny's or something
 30 like it, it's not a Denny's but it's something
 31 along those lines. Some chain of restaurants
 32 that he bought into so it's that type of
 33 restaurant and go to school."

34 When asked what he would do.

35 "What ever he assigned me. He wanted me to be
 36 a Human Resource Manager, I think I would need
 37 some more training to do that but wash dishes,

1 what ever he needed me to do."
2 (Exh. C., pg. 50, Ln. 13-26)

3 When asked about his other parole-plans.

4 "The next plan is to go either to my grandparents
5 house who live in San Francisco and or go to my
6 sister's house who lives in Oakland."

7 "I don't have any employment plans for either
8 residence but there was a parole officer who came
9 up here and he was informing us (those who
10 volunteered to go talk to him) about PAC,
11 you know when a person paroles and they go and
12 PAC would advise them of where the jobs are located
13 and just some things like that so I would be at
14 PAC meeting the very next day and try to get
15 a job." (Exh. C. pg. 51, Ln. 2-15)

16 Note: PAC is a mandatory-program for all parolees,
17 where they go to a work-shop, job-fair, with jobs
18 that specifically hire parolees.

19 Petitioner had also been approved for Federal-Financial
20 Aid for College, providing the documentation to the Board,
21 (Exh. C., pg. 8, Ln. 13-25).

22 With all of the beforementioned in mind, Petitioner finds
23 it hard to comprehend how his parole-plans were incomplete?
24 And how his actual-responses to the Boards questions about
25 his brother's restaurant, could be mis-construed in the denial
as Petitioner being confused as to what his role would be;
Petitioner was to be the Human Resource Manager, but felt he
needed more training and was willing to do whatever his
brother needed him to do while he got it, yet the Board told
him to pin down what he was going to do. (Exh. C., pg. 50,
Ln. 13-26, & pg. 80-81, Ln. 24-13).

26 Lack of Remorse

27 In denial my remorse was questioned, yet Board
28 acknowledged that Doctor who gave Petitioner his psyche-

1 evaluation, that his report was great considering it came from
2 that particular Doctor. (Exh. C., pg. 47-49), and the Doctor
3 stated that Petitioner's remorse was real, that he accepted
4 responsibility for his crimes, but the Board described his
5 remorse and acceptance in this manner;

6 "I don't really think that you understand
7 the magnitude of what you did by this kidnap
8 for money, so you need to take a look at that
9 because I don't think in here, just in the
way that you talked to us today, we didn't get a
sense that you really understood the nature
of your crime, or your commitment offense.

10 Yeah you said okay I know what I did blah, blah,
11 blah but do you know what you did to the victim
or how it impacted that particular victim."
(Exh. C. pg. 83-84, Ln. 21-5)

12 Later stating;

13 And your plan; we talked a little bit about you
14 going to LA, you had testimony and the record
15 there from your crime partners who said yeah
he did this and yes he did that.

16 There was some inconstancies on what took place,
17 who was involved in the conversations and we
18 just feel that you need to take a little self
help, analyze and come to the realization as to
what actually took place."
(Exh. C., pg. 84, Ln. 5-13)

19
20 Just another point of why in Claim I & II Petitioner
21 contends past crimes should not be cause to deny parole, but
22 the Commissioner's closing statement is even more egrigious
23 because it directly conflicts with an earlier one he made;

24 "Nothing that happens here today will change
25 the finding of the court."

26 Okay, Petitioner was not charged nor convicted
27 of going to LA, which was alleged by his crime
partners.

28 "We are not here to re-try your case, we are here
to determine if you are suitable for parole."
(Exh. C., pg. 7, Ln. 1-5)

1 If nothing that happens in the hearing will change the
 2 finding of the Court, and the point of the hearing is not to
 3 re-try the case, then how can the Board Constitutionally
 4 state that Petitioner needs self help because he failed to
 5 admit to committing acts his crime-partners stated he did,
 6 which he hadn't been charged or convicted of?

7 Claim V & Conclusion

8 Blah, Blah, Blah, is what Petitioner's initial-parole
 9 hearing turned out to be in regards to the Board respecting
 10 the Constitutionally protected liberty interest of the
 11 process. Simply put, the fix was in, Claim II, and they did
 12 what they wanted to do instead of what the Constitution
 13 mandated they do.

14 The cumulative effect of all of the beforementioned
 15 violations rendered Petitioner's entire parole-hearing
 16 process, unconstitutionally sound.

17 Petitioner's continued incarceration and being forced
 18 to go through the California Parole Hearing Process (Farce);
 19 will exacerbate and indefinitely prolong a 'Miscarriage of
 20 Justice'.

21 Although not a miscarriage of justice in the conventional
 22 sense of actual/factual innocence, the United States Supreme
 23 Court has made the following comments on the subject;

24 "Most important, however, the focus on innocence
 25 assumes erroneously, that the only value worth
 26 protecting through federal (State) habeas review
 27 is the accuracy and reliability of the guilt
 28 determination.

29 But "[o]ur criminal justice system, and our
 30 Constitution protect other values in addition to
 31 the reliability of the guilt or innocence

1 determination, and the statutory duty to serve
 2 'law and justice' should similarly reflect
 3 those values. Sawyer v. Whitley (supra) 112,
 at 2528, quoting, Smith v. Murray 106 S.Ct. 2661,
 at 2672

4 Later stating;

5 "While the conviction of an innocent person may
 6 be the archetypal case of a manifest miscarriage
 7 of justice, it is not the only case. There is no
 8 reason why "actual innocence" must be both an
 animating and the limiting principle of the work
 of federal (State) courts in furthering the "ends
 9 of justice." As Judge Friendly emphasized, there
 are contexts in which, irrespective of guilt or
 innocence, constitutional errors violate
 fundamental fairness. Friendly, is innocence
 10 irrelevant?

11 Fundamental fairness is more than accuracy at
 12 trial (Parole-Hearings); justice is more than
 13 guilt or innocence."

Sawyer at 2530

14 In another Opinion, having nothing to do with Parole-
 15 Hearings, but addressing Miscarriages, Dretke v. Haley (2004)
 16 124 S.Ct 1847, at 1854, Justice Stevens dissent,

17 "The unending search for symmetry in the law
 18 can cause judges to forget about justice. This
 should be a simple case."

19 Symmetry in the law will tempt Courts to limit
 20 the re-review of this case to only Board issues,
 21 and not consider the overall effect that all
 the Claims have had on making the process a
 Farce on Justice.

22 at 1855 "...when cause and prejudice standard is
 23 inadequate to protect against fundamental
 24 miscarriages of justice, the cause and prejudice
 requirement must yield to the imperative of
 correcting a fundamentally, unjust incarceration.
 (Quoting Engles v. Isaac 456 U.S. 107, 135)

25
 26 "That the State has decided to oppose (Parole) the
 grant of habeas relief in this case, ...might
 27 cause some to question whether the State (County
 of San Mateo) has forgotten its overriding
 "obligation to serve the cause of justice."
United States v. Agurss 427 U.S. 91, 111

1 "But this Court is surely no less at fault.
2 ... "the Court has lost sight of the basic
3 reason why the writ of habeas corpus indisputably
Engle 456 U.S., at 126

4 Habeas corpus is, and has for centuries been, a
5 "bulwark against convictions (continued
incarcerations) that violate fundamental
[541 U.S. 399] fairness", fundamental fairness
6 should dictate the outcome of this unusually
simple case."

7 at 1856, Justice Kennedy's dissent;

8 "The law must serve the cause of justice."

9
10 "[Judicial] discretion can inspire little
confidence if Officials sworn to fight injustice
choose to ignore it."

11 San Mateo County Officials almost literally cost
12 Petitioner his life, and despite the obvious
dangers/threats recognized by the Court, admitted
13 to by police-officials, everyone in the County
with a Fiduciary duty to intercede, failed to
14 do so.

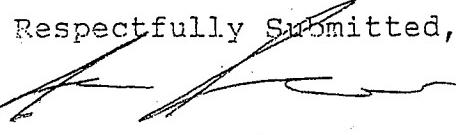
15 State Attorney General Office, Deputy Attorney
16 General Morris Lenk and other's with Authority
over San Mateo County, has and continues to
17 ignore the over-all constitutional violations
suffered by Petitioner.

18 Fundamental fairness should dictate the outcome of this
19 unusually simple but convoluted case, in which;

20 "And what is clear is that the system
21 FAILED him (Petitioner) ultimately,... (Rt. 1676)

22 And similar to Judicial-Precedent set in the Rosenkrantz's
23 case, Petitioner should be released by the Court. (Exh. P.)

24 Respectfully Submitted,

25 
26 La Merle R. Johnson, Petitioner. Dated: _____

**SAN MATEO COUNTY
SUPERIOR COURT DENIAL
OF WRIT**

1
2 (ENDORSED)
3 FILED
4 SAN MATEO COUNTY
5
6 OCT 18 2006

7 Clerk of the Superior Court
8 By GRACE LACEY
9 DEPUTY CLERK

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN MATEO

12 Case No. SC-31800B
13 In re: HC-1811
14 LA MERLE R. JOHNSON)
15 On Habeas Corpus.) ORDER OF DENIAL
16 _____)
17
18

19 The Court has received and reviewed the Petition for Writ
20 of Habeas Corpus filed by Petitioner, La Merle R. Johnson, on
21 August 22, 2006. For the following reasons his writ petition is
22 denied.

23 BACKGROUND

24 The following facts are taken from the Unpublished Opinion
25 of the Court of Appeal for the First Appellate District
26 affirming Petitioner's conviction, filed in this action on
27 August 8, 1997. On the afternoon of July 6, 1993, Petitioner
28 contacted co-defendant Ardie James Moreland ("Moreland"),
arranged a meeting, and told Moreland to bring guns.

Petitioner, Moreland, and Lashon Brown ("Brown") drove to
a restaurant and discussed a plan to rob Aasa Knowles
("Knowles") on the theory that her boyfriend, Ellis Fooths

1 ("Foots"), a drug dealer, would keep some of his cash at her
2 apartment. The three drove to Knowles' apartment, parked
3 nearby, and waited. When Foots arrived at Knowles apartment
4 around 7 p.m., the three decided to rob him as well.

5 Petitioner and Moreland determined that they should take
6 Foots to various places where he kept cash and that they needed
7 additional help. Petitioner called, picked up, and returned
8 with co-defendant Taryn Washington ("Washington") joining
9 Moreland and a man known as Mike or "Pookie." Petitioner
10 proposed that they approach Foots, posing as police officers,
11 and "arrest" him.

12 At about 9:30 p.m., as Foots, Knowles, and a man named
13 Thomas left Knowles's apartment, two cars approached them and
14 disgorged armed men. Knowles fled and called police. Foots
15 started running and threw a bag of cocaine over a fence.

16 Yelling that they were police officers, Petitioner and Moreland
17 ordered Foot to lie down on the ground. When Foots complied,
18 Petitioner held a gun on Foots while Moreland restrained Foots
19 using handcuffs Petitioner had given him. Moreland put Foots in
20 the back of one of the cars, and Petitioner told Moreland to
21 "Get him out of there, away from the scene." McReland and
22 Washington took Foots to the apartment of co-defendant Marion
23 Bonds ("Bonds") in Oakland.

24 Back in Daly City, a police officer responding to a call
25 about the incident saw defendant walking away from the scene
26 wearing clothing that matched the description of a possible
27 suspect. When the officer asked defendant to stop, Defendant
28 became verbally abusive. Other officers arrived and arrested

1 defendant for obstructing and resisting a police officer (PC §
2 148). Petitioner was taken to Redwood City Jail and released
3 around 2:00 a.m. the next morning.

4 Meanwhile at the Bond apartment in Oakland, Moreland and
5 Washington had taken Foot's wallet, gold chain, cellular phone,
6 and keys, used duct tape to blindfold Foots, removed the
7 handcuffs and bound Foots' hands and feet with ropes. When
8 Foots tried to loosen the ropes, one of the men shot him with a
9 stun gun and replaced the handcuffs. Moreland became nervous
10 when Petitioner did not page him as promised, made a plan to
11 kill Foots, drove into the Oakland hills to find a place to
12 dispose of the body, returned, and decided to kill Foots if
13 they did not hear from Petitioner within the hour.

14 Petitioner arrived at the Bond apartment in Oakland about
15 4:30 a.m. Petitioner and Moreland discussed how to get Foots'
16 money and asked Foots how much his people would pay "for his
17 safety." When Foots told them he had \$8,000 in his house,
18 Petitioner drove to the house, but upon seeing Foots'
19 "soldiers" there, returned without having gone inside.

20 Petitioner and Moreland decided to hold Foots for ransom,
21 had Foots call his friend, Louis Aterberry ("Aterberry") to
22 raise ransom money, and told Foots they would kill him if their
23 ransom demand was not met.

24 Petitioner and Moreland decided that since Petitioner
25 resembled Foots, they could use Foots' credit cards to get cash
26 and make purchases. They obtained the "PIN" numbers, credit
27 limits, and other information from Foots, flew to Los Angeles,
28 and used Foots' cards to obtain cash, jewelry, clothing, and

1 other items. The next morning, while Petitioner was loading
2 the purchases into a rented van, Moreland was arrested trying
3 to use one of Foots' credit cards.

4 Petitioner returned to Bonds' apartment. Washington made
5 the telephone calls to arrange the ransom and Petitioner and
6 Bonds told Washington what to say. On the evening of July 8,
7 Petitioner and Bonds went to pick up the ransom, Petitioner
8 retrieved the backpack containing the money, and then returned
9 to the apartment to count the money.

10 While in custody in Los Angeles, Moreland disclosed the
11 location of the Bond apartment. A tactical team forced the
12 apartment door, found ransom money strewn about; found Foots,
13 still handcuffed, bound, and blindfolded with duct tape; found
14 loaded semiautomatic handguns; and found Petitioner, Bonds and
15 Washington trying to hide in a bedroom closet. Foots was held
16 captive, bound and blindfolded from July 6, 1993 to July 8,
17 1993.

18 Prior to Trial, on December 23, 1994, the People brought a
19 motion to deem Petitioner's plea agreement breached. The
20 People's motion and supporting declarations establish that
21 Petitioner entered into a plea agreement whereby Petitioner
22 would be permitted to plead to charges carrying a maximum
23 possible punishment of 17 years, eight months in prison, and in
24 exchange, Petitioner agreed to testify truthfully in the future
25 trials of People v. Porterfield and Knight.

26 In the motion to deem Petitioner's plea agreement
27 breached, the People asserted that at the Porterfield trial,
28 Petitioner changed his testimony mid-trial, stating that his

1 previous testimony was told to him by the District Attorney's
2 investigator and was false. Petitioner subsequently admitted
3 under oath that the story about false or planted testimony was
4 a lie. The Porterfield trial did not result in a conviction.
5 The court granted the People's motion and Petitioner's plea
6 agreement became null and void.

7 A jury found Petitioner guilty of kidnapping for ransom,
8 second degree robbery, and assault with a firearm, and found
9 true enhancements for personal use of a firearm in connection
10 with the kidnapping and assault charges. On January 19, 1996,
11 Petitioner was sentenced to life plus 11 years in prison. The
12 Court of Appeal affirmed Petitioner's conviction on August 8,
13 1997.

14 In the instant petition, Petitioner asserts (1) That it is
15 unconstitutional to deny parole based on facts that can never be
16 changed; (2) That Petitioner was told by several sources that he
17 would not be receiving a parole date at his initial hearing
18 because, contrary to the Penal Code § 3041(d) requirement that a
19 release date be set, the Board had an unspoken/underground policy
20 that inmates do not receive parole grants at their initial
21 hearings; (3) That the San Mateo District Attorney has a conflict
22 of interest when making parole suitability recommendations
23 because a prior Assistant District Attorney had threatened to
24 "fry Petitioner's ass" and revoke Petitioner's plea agreement if
25 the Assistant District Attorney failed to get a conviction based
26 in part on Petitioner's testimony in People v. Porterfield; and
27 (4) that the Parole Board was not justified in recommending that
28 petitioner (a) get self-help (b) stay discipline free, and (c)

1 learn a trade or in basing the decision to deny parole on the
 2 cruel manner of the offense or Petitioner's perceived lack of
 3 remorse.

4 THE DECISION OF THE BOARD OF PRISON TERMS TO DENY PETITIONER
 5 A PAROLE RELEASE DATE WAS PROPER.

6 A. Habeas Corpus Is An Appropriate Means of Challenging the
 7 Denial of Parole.

8 A petition for writ of habeas corpus is proper to
 9 challenge a denial of parole by the Board of Prison Terms. (*In*
 10 *re Sena* (2001) 94 Cal.App.4th 836, 840.)

11 Penal Code section 3040 gives the Board the power to
 12 allow prisoners sentenced to indeterminate terms to go
 13 on parole outside the prison walls and enclosures. The
 14 Legislature has specified that one year prior to the
 15 inmate's minimum eligible release date, a panel of at
 16 least two commissioners of the Board shall meet with
 17 the inmate and shall normally set a parole release
 18 date. (Pen. Code, § 3041, subd. (a).) However, the
 19 panel or the Board need not set a release date if "it
 20 determines that the gravity of the current convicted
 offense or offenses, or the timing and gravity of
 current or past convicted offense or offenses, is such
 that consideration of the public safety requires a more
 lengthy period of incarceration for this individual,
 and that a parole date, therefore, cannot be fixed at
 this meeting." (Pen. Code, § 3041, subd. (b).)

21 (*In Re Morral* (2002) 102 Cal.App.4th 280, 289, see also *In Re*
 22 *Dannenberg* (2005) 34 Cal.4th 1061, 1079.)

23 B. Criteria For Granting or Denial Of Parole And Standard of
 24 Review.

25 "The factor statutorily required to be considered and the
 26 overarching consideration is 'public safety.' As stated in
 27 subdivision. (b) of Penal Code section 3041, the Board 'shall
 28 set a release date unless it determines that the gravity of the

1 current convicted offense or offenses, or the timing and
2 gravity or past convicted offense or offenses, is such that
3 consideration of public safety requires a more lengthy period
4 of incarceration for this individual." (*In re George Scott*
5 (2005) 133 Cal.App.4th 573, 591 [italics added by court].) Title
6 15 of the California Code of Regulations § 2402 provides:
7 "...regardless of the length of time served, a life prisoner
8 shall be found unsuitable for and denied parole if in the
9 judgment of the panel, the prisoner will pose an unreasonable
10 risk of danger to society if released from prison." (*In re*
11 *George Scott* (2005) 133 Cal.App.4th 573, 591 [quoting 15 Cal.
12 Code of Reg. § 2402].)

13 The standard of review for a Denial of Parole following a
14 parole hearing was established by the California Supreme Court
15 as follows: "Accordingly, we conclude that the judicial branch
16 is authorized to review the factual basis of a declaration of
17 the Board denying parole in order to ensure that the decision
18 comports with the requirements of due process of law, but that
19 in conducting such a review, the court may inquire only whether
20 some evidence in the record before the Board supports the
21 decision to deny parole, based on the factors specifically
22 specified by statute and regulation." (*In re Rosenkrantz* (2002)
23 29 Cal.4th 616, 658.).

24 C. The Board's Reliance On Petitioner's Callous Disregard For
25 The Victim When The Crime Was Committed, Plus His Current
26 Lack Of Sincerity and Remorse, Plus The Incomplete Nature of
27 His Work Plans Constitute Some Evidence Supporting The
28 Finding that Petitioner Posed A Risk to Public Safety.

1 Petitioner quotes Penal Code § 3041(b) for the proposition
 2 that the Parole Board shall set a release date unless it
 3 determines that the gravity of the current convicted offense or
 4 past convicted offenses is such that consideration of the
 5 public safety requires a more lengthy period of incarceration.
 6 However, while this section mandates that a date be sent when
 7 there is no perceived risk to public safety, it also precludes
 8 the setting of a release date when release is perceived to
 9 threaten public safety. '[T]he gravity of the commitment
 10 offense or offenses alone may be a sufficient basis for denying
 11 a parole application, so long as the Board does not fail to
 12 consider other relevant factors.' (*In re Ramirez* (2001) 94
 13 Cal.App.4th 549, 569 overruled on other grounds in *In re*
 14 *Dannenberg* (2005) 34 Cal.4th 1061, 1100; citing *In Re Seabock*
 15 (1983) 140 Cal.App.3d 29, 37-38.)

16 In *In re Dannenberg*(2005) 34 Cal.4th 1061, 1071, the
 17 California Supreme Court held: "Accordingly, we conclude that
 18 the Board, exercising its traditional broad discretion, may
 19 protect public safety in each discrete case by considering the
 20 dangerous implications of a life-maximum prisoner's crime
 21 individually. While the Board must point to factors beyond the
 22 minimum elements of the crime for which the inmate was
 23 committed, it need engage in no further comparative analysis
 24 before concluding that the particular facts of the offense make
 25 it unsafe at that time, to fix a date for the prisoner's
 26 release." (*Id.*)

27 Petitioner quotes *Biggs v. Terhune* (9th Cir. 2003) 3134
 28 F.3d 910, 917 for the proposition that "A continued reliance in

1 the future on an unchanging factor, the circumstances of the
2 offense and conduct prior to imprisonment, runs contrary to the
3 rehabilitative goals espoused by the prison system and could
4 result in a due process violation." (Id.)

5 In contrast to the situation in Biggs, however, the
6 transcript of the instant hearing, although missing a number of
7 pages, discloses that the Board didn't feel that Petitioner was
8 being particularly honest at the time of the hearing
9 (Transcript Page 80:13-23), a finding subject to change that
10 would tend to support the conclusion that Petitioner's release
11 presented a potential danger to society; that his Parole
12 employment plans were an incomplete package (Transcript Page
13 80:23-81:13), a factor subject to change that increases the
14 likelihood that Petitioner would return to criminal activity in
15 order to earn a suitable living; and that Petitioner did not
16 exhibit remorse (Transcript Page 81:17-82:1), a factor subject
17 to change that increases the likelihood that Petitioner will
18 commit further crimes. These mutable findings, in addition to
19 the findings regarding the nature of the offense itself,
20 constitute "some evidence" supporting the finding that the
21 parole of Petitioner "would pose an unreasonable risk of danger
22 to society or a threat to public safety."

23 D. Petitioner's Assertion Of An Underground Policy Not To
24 Grant Parole On The First Hearing Or That Petitioner Was
25 Advised In Advance That Parole Would Be Denied Is
26 Irrelevant Because The Instant Board Made Specific
27 Findings Justifying A Denial of Parole to Petitioner At
28 This Time.

1 Petitioner asserts that there exists an underground policy
2 in which parole is always denied at the first hearing and that
3 he was told in advance that his parole would be denied. There
4 is no evidence that this board made a decision to deny
5 Petitioner parole before reviewing the file or considering the
6 facts. The fact that other individuals predicted the outcome
7 of Petitioner's hearing suggests that the board followed
8 predictable guidelines. Even if one or more boards have acted
9 arbitrarily in other cases, such actions are irrelevant in the
10 instant case because the record reflects that the board made
11 multiple findings of fact, each of which are independently more
12 than sufficient to justify denial of parole.

13 Under Penal Code § 3041 and Title 15 of the California
14 Code of Reg. §2402, there is no presumption that a life inmate
15 is entitled to parole or that he/she is automatically suitable
16 for parole based on the amount of time served. (*In re Honesto*,
17 (2005) 139 Cal.App.4th 81, 92-93, see also *Dannenberg*, *supra*, 34
18 Cal.4th at 1093.) Here, the Board's decision was not an abuse of
19 discretion. The record of Petitioner's parole hearing indicates
20 that there was some evidence to support the Board's decision to
21 deny him parole and their statement of reasons for the denial
22 was adequate. The Board considered the relevant factors under
23 Title 15 of the California Code of Regulations §§ 2401, 2402
24 and 2281. Based on these factors including the gravity of the
25 commitment offense, Petitioner's institutional behavior, and
26 his psychological evaluations, the Board's decision to deny
27 Petitioner a parole release date was proper. (*Dannenberg*,
28 *supra*, 34 Cal.4th at 1094-1096.)

1 E. While The District Attorney Objected To Parole There Is
2 No Evidence Of An Unreasonable Bias Arising Out of The
3 Porterfield Trial.

4 Petitioner asserts that the San Mateo District Attorney
5 has a conflict of interest when making parole suitability
6 recommendations because a prior Assistant District Attorney had
7 threatened to "fry Petitioner's ass" and revoke Petitioner's
8 plea agreement if the Assistant District Attorney failed to get
9 a conviction in People v. Porterfield. While the District
10 Attorney did oppose Petitioner's parole, there is no evidence
11 that the opposition was a function of bias.

12 Petitioner has made several collateral attacks on his
13 conviction where the claim of error related to the
14 prosecution's rescission of the plea agreement, including two
15 prior habeas petitions filed in this court on July 30, 1999 and
16 March 29, 2000. Each petition was denied. It has long been
17 the rule that, absent a change in law or fact, courts will not
18 reconsider previously rejected claims. (*In re Clark* (1993) 5
19 Cal.4th 750, 767.)

20 F. There Is Some Evidence Demonstrating That The Board Did
21 Not Act Arbitrarily In Recommending That Petitioner (1)
22 Get Self Help; (2) Stay Discipline Free; (3) Learn A
23 Trade; (4) Perceiving That Petitioner Lacked Remorse; or
24 (5) Considering the Cruel Manner of Petitioner's Offense.

25 Petitioner takes exception to the fact that the Parole
26 Board recommended that he get self help, stay discipline free,
27 learn a trade, found him to lack remorse, or that the Board
28 considered the nature of his crime.

1 It is not clear what the Board based its recommendation
2 concerning self help because Pages 78-79 of the Decision are
3 missing from the Transcript. Petitioner must (i) state fully
4 and with particularity the facts on which relief is sought and
5 (ii) include copies of reasonably available documentary
6 evidence supporting the claim. (*People v. Duvall* (1995) 9
7 Cal.4th 464, 474.) Moreover, the logic of the recommendation
8 that a petitioner seeking parole remain discipline free while
9 incarcerated is self evident. While Petitioner contends that
10 he has learned several trades or businesses while incarcerated,
11 the fact is that Petitioner's plan as presented at the parole
12 hearing was to work in a restaurant and perform human resource
13 functions, wait tables or wash dishes (Transcript p. 81:6-13.)
14 The board also specifically found that Petitioner lacked
15 remorse for the victim. (Transcript at p. 81:17-21.)

16 The Board also found that the underlying offense was
17 committed in an especially cruel manner, demonstrating
18 "exceptionally callous disregard for human suffering" in that
19 the victim was left bound for several days with duct tape over
20 his eyes and fearing that he might be killed at any time.
21 (Transcript at 82:11-83:7.) The Board found that the motive
22 for the crime was inexplicable and very trivial in relation to
23 the offense. (Transcript at 82:25-83:2.) It was appropriate for
24 the Board to consider these matters and the findings are
25 supported by some evidence.

26

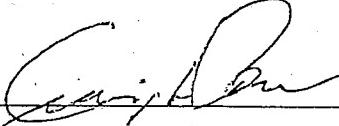
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28

CONCLUSION

The record establishes that there existed "some evidence" supporting each of the Board's findings, each of which independently sufficed as grounds supporting the finding that Petitioner would present a threat to society, and therefore justifying the denial of parole.

DATED: OCT 16 2006



Craig L. Parsons
Presiding Judge, Criminal

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PETITIONER'S RESPONSE TO SUPERIOR COURT DENIAL

1 PETITIONER'S REPLY TO SUPERIOR COURT DENIAL

2 As in most life-crimes, the FACTS are ugly, and this
 3 Petitioner acknowledges his guilt, and the FACT, that this crime
 4 does not show him in his best light. Yet, the law/constitution
 5 recognizes certain rights (liberty-interest) in a parole-hearing
 6 setting, and Petitioner asserts that those interests recognized
 7 by the law have been violated in this instance.

8 STATUTE ALLOWING BOARD TO DENY PAROLE BASED ON FACTS THAT CAN
 NEVER BE CHANGED IS UNCONSTITUTIONAL, CALIFORNIA CONSTITUTION,
 ART. I, § 7(a), 15, 17, 24, & 29, U.S.C.A. 5, , 8, & 14

10 Superior Court in its denial, failed to address the heart
 11 of Petitioner's claims as to why the Statute is unconstitutional,
 12 and or address the conflict raised;

13 P.C. 3041(b}, allows for denial based on
 14 facts of crime(s).

15 P.C. 3041.5(2), states, "...where a parole date
 16 has not been set for the reasons stated in
 17 subdivision (b) of section (3041), the board
 18 shall send the prisoner a written statement
 19 setting forth the reason or reasons for refusal
 20 to set a parole date, and suggest activities in
 21 which he or she might participate that will
 22 benefit him or her while he or she is
 23 incarcerated."

24 Conflict; Board that is enabled to deny parole in any part
 25 based on the unchangeable facts of past-crimes, can not fulfill
 26 their statutory obligation to suggest activities to a prisoner
 27 that will benefit them; benefit them towards a release date,
 28 the only reasonable-interpretation; because, nothing the Board
 could suggest can change the past.

29 Since the past is unalterable, and as stated in the
 30 earlier sections of this writ, Parole-Board releases are
 31 rationalized to the public and on record as having to do with

1 in-prison positive behavior (pages 9-11 of writ), it is only
 2 logical that statutorily allowing for past-crimes FACT-reasoning
 3 to justify denial of parole, will lead to constitutional abuses;

- 4 - Cal. Const. Art. I, §15, U.S.C.A. 5, A person
SHALL not be twice in jeopardy for the same
 5 offense. Yet, when it is statutorily allowed
 6 for Liberty-interest to be denied based on
 7 matters not subject to change, then that person
 is twice being put in jeopardy; which leads to
 other constitutional offenses.,
- 8 - Cal. Const. Art. I, §17, U.S.C.A. 8, A person
SHALL not be subjected to cruel and unusual
 9 punishment. Yet, the statute opens the door to
 just that, why?;
- 10 - Cal. Const. Art. I, §7, 24, 29, U.S.C.A., 5 & 14,
 11 A person SHALL not be denied 'Due Process', or,
 'EQUAL PROTECTION' of the laws.

12 Yet that is not possible when Boards can take
 13 similarly situated (Lifer's) inmates, and treat
 them in an unequal fashion.. How is this done?;

14
 15 All life-crimes contain FACTS that the Public through its
 16 criminal-process has deemed horrific enough to warrant life in
 17 prison, which inherently contains the possibility that the
 18 convicted may never be released. But, as the Court(s) have
 19 recognized, In re: Dannenberg 23 Cal.Rptr.3d 417 (2005),
 20 Biggs v. Terhune (supra) 334 F.3d 910, there is a Liberty-
 21 interest in Life-sentences with the possibility of parole;

22 In allowing Parole-Boards the ability to deny parole based
 23 on unalterable facts, the Legislators have Statutorily
 24 positioned them (Board) to violate the 'Equal Protection' clause
 25 of the Constitution. Horrific-FACTS never change, in that all
 26 Lifer-inmates are equal, yet in statutorily allowing for any
 27 Board to at any time decide that Horrific-FACTS are no longer

1 so horrific as to warrant continued incarceration, OR, to allow
2 them the ability to at any time state that the Horrific-FACTS
3 remain so horrible as to warrant the continued incarceration of
4 someone, is to allow for a system of 'ARBITRARY & CAPRICIOUS'
5 parole grants or denial, with no real threshold for Judiciary
6 review; which opens the door for the subjection of Lifer-Inmates
7 to 'Cruel & Unusual Punishment' and to be continuously (Twice &
8 Many Times More) be put in jeopardy for the same offense.

9 As earlier stated, Parole-Boards rationalization for parole-
10 grants, ALLWAYS, center around in-prison positive behavior and
11 FACTS, (job, family-support, etc.), that have nothing to do with
12 unchangeable facts of the past, strictly and specifically
13 dealing with matters related to the future. With this being the
14 case, the only way to ensure that inmates rights are not
15 constitutionally violated as previously listed, is to strike the
16 Boards ability to deny parole based on the unchanging factors of
17 commitment offenses.

18 'SOME EVIDENCE' STANDARD OF REVIEW IS CONSTITUTIONALLY VAGUE,
19 NOT AFFORDING MEANINGFUL STANDARD OF 'JUDICIARY-REVIEW'

20 Superior Court cited the 'Some Evidence' standard of
21 review, in denying writ. The Board when denying parole is
22 given a checklist of things to cite in order to ensure that
23 Judicial-Review will find that 'Some Evidence' was present to
24 justify the Boards findings. There is never NOT 'Some Evidence'
25 present if a Board wants to deny parole, yet does that mean
26 denial was warranted; Petitioner reasonably asserts, many times
27 no, but what meaningful review can a petitioner receive if the
28

1 Court's review continues to be limited ('Some Evidence') in this
2 fashion?;, Petitioner believes none.

3 SUPERIOR COURTS FINDING OF SOME EVIDENCE IS DEBATEABLE AMONGST
4 REASONABLE JURISTS

5 The Board stated that Petitioner lacked remorse, despite
6 the fact that several times throughout the hearing he expressed
7 it. (Full Hearing Transcript Included For This Court To Make Its
8 Own Assessment). Superior Court cited this as justification for
9 denial, and that such an attitude was indicative of potential
10 future criminality.

11 Prior to going to Board, a Psychological Evaluation is
12 mandated, where the trained Psychologist evaluates the inmate
13 for hours, and then writes a report. (Exh. C. pg. 47-49;
14 Board described Psychological-Evaluation of Petitioner, good,
15 especially in light of Psychologist it came from. Yet Board
16 ignored the Psychologist's trained/educated opinion of remorse
17 being real, of Petitioner accepting his responsibility for crime,
18 of him no longer posing a threat to society, and instead
19 replaced it for their own in justifying denial.) (Exh. R pg 7-8)

20 The legal-question then is, how can an untrained Board
21 ignore the findings of the Statutorily-Mandated psychological
22 evaluation, replace the Psychologist's opinion with their own,
23 and then the Petitioner receive meaningful review (Calif. Const.
24 Art. I, §7(a), 15, 24, 29, U.S.C.A. 5 & 14, 'DUE PROCESS') if
25 the Court, is limited to re-citing the Boards Findings/statements
26 indicative of 'Some Evidence'? And if the Boards opinions
27 surrounding 'Remorse' supersede the Psychologist, then why is
28

1 the psychological evaluation mandated?; Board does not like the
 2 evaluation, in spite of complimenting it as in this instance,
 3 and then they ignore it, not only ignore it, but again in this
 4 instance, recommend 'Self-Help', which the evaluation stated was
 5 not needed. (Exh. R, pg. 8)

6 Boards finding that Petitioner lacked remorse, conflicts
 7 with Psychological-evaluation; as such there is serious question
 8 as to the validity of that finding, warrenting Judicial-Review
 9 to determine is the 'Some Evidence' standard met, when that
 10 'Some Evidence' is conflicted by unbiased (Psychologist's)
 11 evidence duly trained/able to deliver opinion on question
 12 (Lack of Remorse) at issue?

13 REMORSE, REASONABLY NOT NECESSARY FOR PAROLE GRANT, REQUIREMENT
OF SUCH CONFLICTS WITH PENAL CODE 5011(b)

15 "The Board of Prison Terms SHALL NOT require,
 16 when setting parole dates, an admission of
 17 guilt to any crime for which an inmate was
 18 committed."

19 If an inmate does not have to admit the crime, meaning they
 20 can deny and or refuse to discuss it, then it reasons that he
 21 or she is not required to exhibit and or express remorse.

22 In this instance Petitioner chose to discuss the crime,
 23 conceded his involvement, and expressed his remorse, with the
 24 full knowledge that legally he was not required to do so; (this
 25 act reasonably indicates remorse and acceptance of responsibility)
 26 Both the Psychologist and the Board, per the law, advised
 27 Petitioner that he was not obligated to discuss the crime in any
 28 fashion.

1 LEGAL QUESTIONS RAISED BY P.C. 5011(b)

- 2 1: Does the Body of California Law, indicating that lack
 of remorse cited by Board or other's, (Psychologist,
 etc.), meets the standard of 'Some Evidence' to
 justify denial of parole, violate the Constitutional
 protections of 'Due Process' due to the inherent
 conflict it has with P.C. 5011(b)?
- 5 2: Does the Body of California Law, indicating that
 the presence of remorse is indicative of rehabilitation,
 violate the Constitution in its inherent conflict with
 P.C. 5011(b);
- 8 Does that Body of Law create a different class of
 inmates, whom if they exercise their right not to
 discuss the crime, admit guilt but fail-to-display
 remorse, or deny any culpability, how can they satisfy
 the precedent of remorse being necessary in order to
 secure a parole date?; (Due Process, Equal Protection)

12 Petitioner reasonably asserts that the 'Remorse' questions
 raised above, do violate the Constitution and the uncertainty
 of it prejudiced him when going before the Board; how?, what
 standard of review is present when the Board can base denial
 on the lack of something, remorse, that per the Statute a
 inmate/Petitioner is not required to have? Petitioner's
 constitutional rights in this instance have been violated; Due
 Process not reasonably obtainable under the currently accepted
 standards.

21 PETITIONER'S PAROLE PLAN AND JOB WERE REASONABLY
 A FULL PACKAGE

23 Petitioner has a job-offer, a housing offer, a support
 offer, from an Officer of the Law, yet the Board found that that
 was an incomplete package because Petitioner was unable to
 provide more personal details of his brother's business'; where
 if they trully had questions about it, they could have called
 the Police-Detective and asked them.

1 On 09/23/05, Petitioner had his Psychological-Evaluation,
2 where he told the Psychologist the exact same thing he told the
3 Board about his parole-plans; work for his brother and go to
4 school. By the time he saw the Board 6-months later on March
5 22, 2006, he had secured Federal Funding for college.

6 The Board critisized Petitioner for not knowing the exact
7 Job-Description he would have, yet, he told them what his job
8 description would be; his brother wanted him to be the Human
9 Resource Manager, but he felt he needed more education to
10 fulfill that role, so he would do whatever his brother wanted
11 him to.

12 Reasonably speaking, when a company is offering a potential
13 parolee a job, with no clear indication when that person will
14 be available to fill it, then the job-duties are subject to
15 change because the business must reasonably fill vacant spots.

16 Constitutionally speaking, in this instance, what then is
17 a reasonable standard of review?

18 **IT IS UNCONSTITUTIONAL FOR BOARD TO SUGGEST MORE SELF-HELP, WHEN**
19 **BOARD UNABLE TO SPECIFY WHAT TYPE OF HELP**

20 Psychological evaluation was clear, Psychologist, Frank D.
21 Weber, stated, "I do not recommend any treatment for either
22 mental health or substance abuse issues."

23 In suggesting self-help, Board did not and could not
24 specify which type to get, yet used it in its reasoning to
25 justify denial.

26 Petitioner admitted his crimes, but failed to admit and
27 has always denied certain allegations his codefendants said he
28 did, in particular go to LA as listed in the Statement of FACTS

1 outlined in the Superior Courts denial, and which was based off
2 of Appellate Courts unpublished Opinion on Direct Appeal.

3 Despite being in the Statement of Facts of the Courts, Petitioner
4 was never charged with going to LA, despite the voluminous
5 evidence against him in his case, no evidence corroborated his
6 codefendants claims of him being in LA.

7 As stated earlier, P.C. 5011(b), states that the Board can
8 not deny parole based on an inmate failing to admit the crimes
9 he was committed for, so reasonably speaking this would also
10 apply to crimes the inmate was accused of yet never charged with.

11 In this instance, this portion of the denial and suggestion
12 to take self-help to come to terms with it, clearly violates the
13 statute; P.C. 5011(b). And careful review of the full record
14 will show that the self-help suggestion by the Board, entail
15 him admitting to things his codefendants said he did in/during
16 the crime.

17 Constitutionally speaking, in this instance where the denial
18 and subsequent/related Board-suggestions, are in violation of
19 the Penal Code (Due Process), what then is the standard of
20 review?

21 Superior Court also failed to address Petitioners assertions
22 regarding self-help recommendations, in consideration to Richard
23 Mejico's CGA & Re-Entry programs, (This writ, pg. 25).

24 VOCATIONAL TRADES

25 (This writ, pg. 26-28), Superior Court failed to address
26 these claims.

27 //
28

1 SAN MATEO COUNTY HAS A CLEARLY RECOGNIZABLE CONFLICT IN REGARDS
2 TO MAKING PAROLE RECOMMENDATIONS

3 Superior Court misstated FACTS & LAW, regarding this issue.
4 One, it was not an Assistant District Attorney who made the
5 threat of frying Petitioner's Ass, it was the Chief Prosecuting
6 Attorney, the second in command in the District Attorney's
7 Office; who today, is still the second in command.

8 There are two Presiding Judges in San Mateo County, the
9 Honorable Craig L. Parsons, who responded to this writ and
10 presides over criminal matters. And the other is the Honorable
11 Stephen Hall, who prosecuted Petitioner's case when he then
12 was a Deputy District Attorney for the San Mateo County District
13 Attorney's Office, who's immediate boss at the time was the
14 Chief Prosecuting Attorney, Steve Wagstaffe. In this Petitioner
15 asserts, that reasonably speaking, the Hon. Craig L. Parsons had
16 a conflict ruling on whether or not his Superior and or
17 similarly ranked colleague (Presiding Judge Hall) aided in the
18 creation of a conflict between Petitioner and San Mateo County,
19 as outlined in pages 13-23; this in addition to the fact that
20 two other Senior Judges, colleagues and those whom are
21 Supervised by Presiding Judge Parsons if they still do criminal
22 matters, Judge Forcum and Judge Hahn, are both outlined in the
23 writ and on record of making damaging statements clearly
24 indicative that reasonably a conflict exists.

25 Finally on this issue; Superior Court implies to
26 reviewing Courts that the issue of conflict has been resolved
27 in other collateral attacks, this is a false impression. While
28

1 it is true that Petitioner has filed several writs in the San
2 Mateo County Court attacking his conviction, it is irrelevant
3 that those writs were denied in this instance. Why? This is
4 not a collateral attack on the conviction, as the denial
5 pointed out, page 6, writ petition is properly before the Court
6 regarding attack on parole-denial, and issue before the Court is
7 whether or not activities between Petitioner and San Mateo
8 County have resulted in a conflict revolving around the County
9 District Attorney giving a parole-recommendation.

10 So for the Superior Court to indicate to reviewing Courts
11 that they are procedurally barred from reviewing this issue, is
12 in its simplest and politest terms, misleading and an inaccurate
13 statement of law.

14 FACT THAT PAROLE BOARD ALLEGEDLY SATISFIED THE 'SOME EVIDENCE'
15 STANDARD, DOES NOT MAKE IT IRRELEVANT THAT BOARD OPERATING AN
16 ILLEGAL POLICY OF DENYING PAROLE, JUST BECAUSE, AT INITIAL
PAROLE BOARD HEARINGS

17 Superior Court stated that since the Board had made specific
18 findings justifying the instant denial, that the assertion by
19 Petitioner of an underground policy is irrelevant; Petitioner
20 respectfully disagrees.

21 Reasonably speaking, if in fact an underground policy
22 exists, then the Board will be wise enough to go through their
23 checklist of things to put on the record, 'Specific Findings',
24 satisfying the 'Some Evidence' standard, to ensure that
25 the policy is not exposed.

26 Petitioner was told by a Board Member, at his documentation
27 hearing in 2003, that he would not be receiving a date, and by
28

1 other State Employees in a position to know the exact same thing.
2 Superior Court stated, page 10, Line 6-8, "The fact that other
3 individuals predicted the outcome of Petitioner's hearing
4 suggests that the board followed predictable guidelines."
5 Reasonably speaking, the Court's statement/view raises more
6 questions than it answers; how could someone three years prior
7 to the hearing, know that the Board would say Petitioners parole
8 plan was incomplete, or that he lacked remorse despite the
9 Psychologist stating that he had it, or that he lacked remorse
10 when statutorily, P.C. 5011(b), he was not mandated to admit or
11 in any way discuss the crime in order to receive a parole-date,
12 and or that he was told to seek self-help in order to come to
13 term with what really happened, again when P.C. 5011(b) states
14 that he need not admit his crimes in order to receive a date?

15 In addition to the statistical data spoken of in the
16 earlier portions of this writ, Petitioner provides the Court
17 with the Declaration of Albert M. Leddy, an ex-District
18 Attorney, ex-Chairman of the Board of Prison Terms, amongst
19 other things, in which he gives statements & opinions that there
20 is indeed underground policies. (Exh. S)

21 Petitioner has an absolute right to a fair and impartial
22 Board Hearing, that was not possible when the Board was
23 functioning on an underground policy.

24 Reasonable consideration of the individual and cumulative
25 effect of all of the beforementioned issues indicate that
26 Petitioner's Board Hearing was constitutionally unsound, added
27 to that is this;

1 BOARD'S REGULATORY/ADMINISTRATIVE RULES CLEARLY CONFLICT WITH
2 PENAL CODE 5011(b)

3 Title 15, 'INFORMATION CONSIDERED', Art. 2, §2236

4 "The facts of the crime shall be discussed
5 with the prisoner to assist in determining
6 the extent of personal culpability. The
7 Board shall not require an admission of
8 guilt to any crime for which the prisoner
9 was committed. A prisoner may refuse to
discuss the facts of the crime in which
instance a decision shall be made based on
the other information available AND THE
REFUSAL SHALL NOT BE HELD AGAINST THE
PRISONER."

10 Shall is mandatory language, Art. 2, §2236, states that the
11 facts of the crime shall be discussed to determine culpability;
12 then it states that the Board shall not require an admission of
13 guilt to any crime for which the prisoner was committed, similar
14 language to P.C. 5011(b), and it states that the prisoner does
15 not have to discuss the facts of the crime, that a decision shall
16 be made based on other information available and the refusal
17 SHALL not be held against the prisoner.

18 Prisoner is committed for a Life-Sentence, so some degree
19 of culpability is apparent; the Board shall not require an
20 admission of guilt; as Petitioner was told specifically by the
21 Board, (Exh. C. pg 9, ln. 22-26);

22 "Okay you are not required to admit your
23 offense or discuss your offense however
24 the panel does accept the findings of the
court to be true."

25 The Board stated that it would accept the findings of the
26 (Trial) court to be true; the trial Court did not find
27 Petitioner guilty of going to LA, yet the Board recommended
28 self-help for his refusal to admit it.

1 Board also called into question Petitioner's veracity for
2 his failure to admit going to LA and or concede that his co-
3 defendants statements as to his specific words/actions were
4 correct; yet, the Board's actions clearly conflict with their own
5 regulatory rules, §2236, which states that the prisoner's refusal
6 to discuss and or admit to crimes, SHALL not be held against them.

7 Regulatory Authority/Rules, shall align with the Penal Code
8 it enacts. §2236 appears consistent with Penal Code 5011(b),
9 that is until you review §2281 which outlines what the Board is
10 to consider for parole purposes;

11 Title 15, §2281(b) "past and present attitude
12 toward the crime."

13 Reasonably speaking, attitude towards the crime conflicts
14 with the prisoner not having to admit and or discuss it; yet the
15 Board is allowed to consider past and present attitude toward
16 the crime. So, if as in this instance, a prisoner denies a
17 act, the Board can deem he is dishonest, lacks remorse, and needs
18 self-help to come to grips with it?

19 Title 15, §2281(d) "Circumstances tending to
20 show suitability:

21 (3) "Signs of remorse. The prisoner performed
22 acts which tend to indicate the presence of
23 remorse, such as attempting to repair the
24 damage, seeking help for or relieving suffering
of the victim, OR THE PRISONER HAS GIVEN
INDICATION THAT HE UNDERSTANDS THE NATURE AND
MAGNITUDE OF THE OFFENSE."

25 Petitioner reasonably states, that the Board of Prison Terms
26 and or the current name, Board of Parole Hearings, has NEVER
27 paroled an inmate who failed to express remorse, which IS one of
28 the justifications it can cite for paroling. BUT, if by statute

1 the prisoner does not have to admit and or discuss the facts of
2 the crime, how can past or present attitude towards the crime and
3 or current signs of remorse be legally applicable to determining
4 parole suitability? It can not.

5 Furthermore, "...the prisoner has given indication that he
6 understands the nature and magnitude of the offense.", clearly
7 and reasonably calls for an admission of guilt. Petitioner
8 reasonably states this, not one inmate has ever been paroled by
9 the Board who failed to acknowledge guilt and remorse, not one,
10 yet the law clearly states that that is not necessary.

11 The Board has enacted and enforced regulations that conflict
12 with the Penal Code, and in this instance that enforcement is
13 clearly prejudicing Petitioner because it calls for him to do
14 something, (admit to his codefendants statements of his actions,
15 some of which he was never charged nor convicted of), that the
16 Penal Code and the Board's own regulations does not require him
17 to do. P.C. 5011(b), Title 15, §2236, 'No admission of guilt
18 necessary, nor shall it be held against prisoner.' So, not only
19 is the Boards regulations in its entirety (§2236 & 2281(b) & (d)
20 (3)), in conflict with the Penal Code, but in this instance the
21 Board violated its own regulations when holding it against
22 Petitioner for failing to admit to things he had never been
23 charged and or convicted of; and even if he had been charged
24 and convicted, the Board shall not hold a refusal to discuss it
25 against him.

26 The Board is en-acting its own policies, some of which are
27 underground, in addition other questions have now arisen;

1 BOARD CONSTITUTIONALLY UNABLE TO CARRY OUT ITS DUTIES OF ASSESSING
 2 REHABILITATION OF LIFE PRISONERS, WHEN SECRETARY OF CORRECTIONS
 3 AND CALIFORNIA GOVERNOR ON RECORD STATING THAT UNDER CURRENT
 4 PRISON CONDITIONS, REHABILITATION NOT POSSIBLE

5
 6 James Tilton, Secretary of Corrections, in a Sacramento
 7 Bee Newspaper Article, August 01, 2006, Exh. N, stated;

8
 9 "The Department of Corrections owns the
 10 responsibility to assist inmates who are
 11 willing to change their ways with basic tools,
 12 of education, life skills, drug treatment,
 13 and mental health, so they can be better
 14 when they leave corrections, not worse."

15
 16 "**BUT** until I get overcrowding reduced...then
 17 I don't have the opportunity to provide the
 18 program that I believe is my charge."

19
 20 Governor Arnold Schwarzenegger, on 9/21/06, told
 21 the Sacramento Bee Newspaper during an Editorial
 22 Staff meeting, Exh. I)

23
 24 "Gov. Arnold Schwarzenegger said Wednesday that
 25 California needs more prison beds before it can
 26 run a successful rehabilitation program,..."

27
 28 Federal Judge Thelton Henderson, told Sacramento
 29 Bee Reporter Andy Furillo, that California had
 30 only added the name Rehabilitation, not implemented
 31 it. (Exh. II)

32
 33 And the California Lifer Newsletter Reported in its
 34 February/2006 release, that they are in possession
 35 of a letter by the Board's P.I. Officer, Bill Cessa,
 36 which states,

37
 38 "[u]ltimately, the Board of Prison Terms only grants
 39 parole for lifers when it is convinced that the inmate
 40 has served a suitable amount of time in custody..."
 41 (Exh. V)

42
 43 The Boards P.I. Officer has allegedly made statements
 44 indicative of an underground policy, ex-Commissioner Albert
 45 M. Leddy in a sworn Declaration stated that undergound policies
 46 exist, Governor and Secretary of Corrections on record saying
 47 that under current conditions rehabilitation not possible,

1 ex-Secretary of Corrections Jeanne S. Woodford outlined a very
2 bleak picture of the State of Corrections in California in an
3 Editorial, Exh. W, and Federal Judge Henderson who is considering
4 taking the entire California Corrections system into Receivership
5 has stated Rehabilitation is just an added name, not a reality.

6 With that said, constitutionally speaking, if the Boards
7 bosses, Secretary of Corrections and the Governor are on the
8 record stating that until conditions change, rehabilitation not
9 possible, how then can the Board assess whether or not Lifer
10 Inmates are rehabilitated?

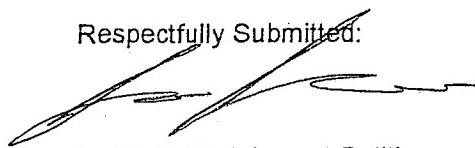
11 And if under these conditions they can assess whether or
12 not Lifers are rehabilitated, wouldn't such rehabilitation be
13 indicative of the Lifer's efforts, not the prisons?; and that
14 goes to support Petitioner's contentions that he has taken
15 the steps to rehabilitate himself.

16 At this time, the Board can not fulfill its statutory
17 duties in light of the Governor and Secretary of Corrections
18 being on the record stating that under current conditions,
19 rehabilitation, (which is only required for Lifers), is not
20 possible; and as such, Court intervention is constitutionally
21 necessary in order to assure Lifers Rights to Fair-Hearings.

22 CLOSING

23 The cumulative effect of all of the beforementioned issues,
24 and the meritable individual issues in and by themselves, warrent
25 Court-Intervention and an issuance of an 'Order To Show Cause'
26 because a Prima Facie case has been shown. In accordance with
27 law, if Order To Show Cause issues, appointment of Counsel is
28 requested.

Respectfully Submitted:



La Merle R. Johnson, Petitioner

Date: November 16, 2006

Writ Filed In Appellate Court:

11/20/06

MC-275

Name La Merle R. JohnsonAddress P.O. 409060(C15-208L)Tone, CA 95640-9060CDC or ID Number J-92682**FILED**

NOV 20 2006

Court of Appeal - First App. Dist.
DIANA HERBERT

By _____

DEPUTY

FIRST APPELLATE DISTRICT COURTSTATE OF CALIFORNIA

(Court)

PETITION FOR WRIT OF HABEAS CORPUSLA MERLE RONNIE JOHNSON

Petitioner

vs.

ROSANNE CAMPBELL, Warden (A)

Respondent

No. _____

(To be supplied by the Clerk of the Court)

A115885**INSTRUCTIONS—READ CAREFULLY**

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
 - If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

Page one of six

Appellate Court's Denial:

11/22/06

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re LA MERLE RONNIE JOHNSON,
on Habeas Corpus.

A115885

FILED	
Court of Appeal First Appellate District	
NOV 22 2006	
Diana Herbert, Clerk	Deputy Clerk
By _____	

(San Mateo County
Super. Ct. No. SC-31800B; HC-1811)

BY THE COURT:^{*}

The petition for a writ of habeas corpus is denied.

Dated: NOV 22 2006McGUINNESS, P.J.

* McGuiness, P.J., Parrilli, J. & Siggins, J.

Petitioner's Response To Appellate Courts Denial

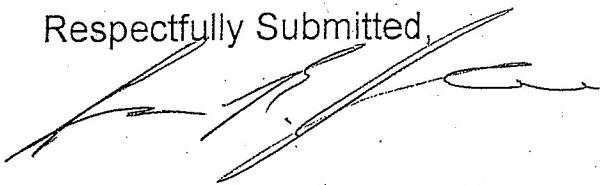
11/20/06

Petitioner's Response To Appellate Courts Denial

Dated: 11/28/06

Respectfully, Petitioner asserts his writ was not given a thorough review, given that a 50-page writ, 12-page Superior Court denial, and 100+pages of exhibits were denied within a 48-hour period.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "La Merle R. Johnson".

La Merle R. Johnson, Petitioner.